

# State of New Hampshire DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095 (603) 271-3503 FAX (603) 271-2867



GRJH, Inc. PO Box 728 Sharon, CT 06069

Re: Cobble Pond Farms 125 West Road Canterbury, NH NOTICE OF PROPOSED ADMINISTRATIVE FINE AND HEARING NO. AF 01-020

**April 23, 2001** 

#### I. Introduction

This This Notice of PropThis Notice of Proposed AdThis Notice of Proposed Administrative Fine and EEnviEnvironmentalEnvironmental Services, Waste Management Division (the Division) to GRJH, Inc., pur toto RSA 146-C:10-a and Env-C 601.05. The Division is proposing that a fine totaling \$6,500 be imimposed against GRJH, Inc. for the violations alleged below. This notice containsThis notice conprocedural information. Please read the entire notice carefully.

#### II. Parties

- 1. The The DepartThe Department Department of Environmental Services, Waste Management adadministrative administrative agency of the State of New Hampshire, having its principal officeadministrative Drive, Concord, NH.
- 2.2. GRJH, Inc. is a New2. GRJH, Inc. is a New Hampshire corporation having a mass Sharon, Sharon, CT 06069. GRJH, Inc. is the successorSharon, CT 06069. GRJH, Inc. is the successor Hampshire.

#### III. Summary of Facts and Law Supporting Claim(s)

- 1.1. RSA 146-C authorizes the Department of E1. RSA 146-C authorizes the Department of Envir undergroundunderground storage tank (UST) facilities. Pursuant to RSA 146-C:9, the Commissioner of DESDES has adopted rules to implement this regulatoDES has adopted rules to implement this regulatory pr 1997,1997, which superceded Ws 411 effective September 17, 1985 through Nove1997, which superceded VEnv-Ws 411 effective November 2, 1990 through April 21,1997).
- 2. RSARSA 146-C:10-a aRSA 146-C:10-a auRSA 146-C:10-a authorizes the Commissioner of DES to imp to \$2,000 per offense for violations of RSA 146-C, including any rule adopted pursuant thereto. PursuantPursuant to RSA 146-C:10-a, I, the CommissionPursuant to RSA 146-C:10-a, I, the CommissionP
- 3.3. GRJH, Inc. is the own3. GRJH, Inc. is the owner of three g3. GRJH, Inc. is the owner of three g Road, Canterbury, NH further identified as UST #0-110079 ( the Facility ).
- 44.4. The Facility is subject to the requirements of RSA 146-C and the rules adopted 4. The Facility is subthat chapter.

- 5.5. Env-Wm 5. Env-Wm 1401.5. Env-Wm 1401.30(b) requires automatic line leak detectors to be tested that they are operating according to manufacturer s recommendations, at the test results to the Division no later than 30 days after the date of the test.
- 6.6. Division records reflect that no automatic line leak detector test results for t6. Division records reflect been received for the years 1998 and 1999.
- 7.7. Env-Wm 1401.08 require7. Env-Wm 1401.08 requires that when a t7. Env-Wm 1401.08 requires that thethe new owner shall fithe new owner shall file an amended registration form with the Dittransfer.
- 8.8. Division records reflect that no amended registration form for the Facility has been filed w8. Division rethe Division.

### IV. Violations Alleged

- 1.1. GRJH, Inc. has violated1. GRJH, Inc. has violated Env-Wm 1401.30(bl. GRJH, Inc. has violated E toto provide annual automatic line leak detector test results for the three UST systems to provide annual Facility to the Division within 30 days of the date of the test.
- 2.2. GRJH, Inc. has violated Env-Wm 1401.08 for faili2. GRJH, Inc. has violated Env-Wm 1401.08 for faility upon transfer of ownership.

#### V. Proposed Administrative Fines

- 1.1. For the violations identified in IV.1. above, Env-C 607.03(j) s1. For the violations identified in IV.1 syssystemsystem psystem per requirement not met. For the three violations noted above (one per system) in of the two years 1998 and 1999, the Division is seeking a total fine of \$6,000.
- 2. ForFor the violation identified in IV.2. above, Env-C 607.06(b) speciFor the violation identified in IV.2 the violation noted above, the Division is seeking a total fine of \$500.

#### The total fine being sought is \$6,500.

#### VI. Hearing, Required Response

GRJH,GRJH, Inc. has GRJH, Inc. has the rightGRJH, Inc. has the right to a hearing to contest the Divisi imposed.imposed. A hearing on this matter has bimposed. A hearing on this matter has been scheduled imposin **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

PursuantPursuant to Env-C 601.06, GRJH, Inc. is required to respond tPursuant to Env-C 601.06, GRJ no later than May, 18, 2001 using the enclosed colored form as follows:

1. If If GRJH, Inc. plans to attend the hearing, please have alf GRJH, Inc. plans to attend the hearing, the the appearance (upper portion) and return the appearance (upper portion) and return it to Ja Paralegal, at the address noted on the form.

- 2. If If GRJH, Inc. chooses to waive the hearing and pay the proposed fine, please have an authorized authorized representative sign the waiver (lower portion) and return it wiwith payment of the fine to Mr. Ballentine.
- 3. If GRJH, Inc. wishes to discuss the GRJH, Inc. wishes to discuss the possibility If GRJH, authorized authorized representative sign the appearance and return it to Mr. Ballentine and a Ballentine to indicate GRJH, Inc. s interest in settling.

GRJH,GRJH, Inc. is not required to be repGRJH, Inc. is not required to be representedGRJH, Inc. is not representedrepresented by an attorney, the attorney must file an appearance represented by an attorney, the at proposed findings of fact to the person conducting the hearing.

IfIf GRJH, Inc.If GRJH, Inc. wishes to have a hearing but is unable to send an authorized representative toto the hearing as scheduled, GRJH, Inc. must notify Mr. Ballentine at least one week in advanceadvance of the hearing and request that the hearing be rescheduled. If GRJH, Inadvance of the hearing in advance and does not have an authorizednotify Mr. Ballentine in advance hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

### VII. Determination of Liability for Administrative Fines

PursPursuant Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Divisio Pursuant proprove, prove, by a preponderance of the evidence, that GRJH, Inc. committed the violation alleged anprove, that that the total amount of the fine sought is thethat the total amount of the fine sought is the appropriate amount rulesrules. Proving something by a preponderance of the evidence means that it is **more likemore than not** that the thing sought to be proved is true.

If If the Division If the Division proves tIf the Division proves that GRJH, Inc. committed the violation ar soughtsought is the appropriate amount under the applicable statutsought is the appropriate amount under the be imposed, subject to the following:

- \* PursuantPursuant to Env-C 601.09(c), the fine will be reduced by 10% for for each of the circlisted below that GRJH, Inc. proves, by a preponderance of the evidence, appl applies in applies case:
  - 1.1. The violation was a one-time or non-continuing violation, **and** GRJH, Inc. did not know aboutabout the about the requirement when the violation occurred, **and** the violation has reoccurred as of the time of the hereoccurred as of the time of the hearireoccurred as of the tensenbeen corrected, **and** GRJH, Inc. did not benefit financially, GRJH, Inc. did not benefit financially from the violation.
  - 2.2. At the time the violations were committed, GRJH, Inc. was maki2. At the time the violations were comply with the requirement that was violated.

- 3.3. GRJH, Inc. has no history of non-complia3. GRJH, Inc. has no history of non-compliance with 3 DES or with any permit issued by DES or contract entered into with DES.
- 4.4. Other i4. Other information exist. Other information exists which is favorable to GRJH, Inc. s case with Division at the time the fine was proposed.

## \*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\*

The The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division wihearing, the Division will preshearing, the Division will prese committed the violation alleged above and that the fine should be committed the violation alleged above and that the fine should be committed the violation are graph, Inc. s opportunity to present testimony GRJH, GRJH, InGRJH, Inc. did not commit the violation and/or that the fine(s) imposed, imposed, or that the fine sought should be reduced. If GRJH, Inc.If GRJH, Inc. did not commit the violation (s) or that the fine should not commit the violation(s) or that

otherwise support GRJH, Inc. s positotherwise support GRJH, Inc. s position, other thethe hearing. GRJH, Inc. may also bring witnesses (otthe hearing. GRJH, Inc. may also br testify on GRJH, Inc. s behalf.

If If GRJH, Inc. wishes to have an informal meeting to discuss the issues, If GRJH, Inc. wis IncInc.Inc. must coInc. must contact Mr. Ballentine at (603) 271-6072 to request a preconference.

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InformationInformation regarding this proposed fine may be made available Information regarding this proposed pagepage (www.state.nh.page (www.state.nh.us.des). If GRJH, Inc. has any questions about the James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc: Gretchen Rule, DES Enforcement Coordinator Susan Alexant, DES Hearings and Rules Attorney Thomas R. Beaulieu, Chief Lynn A. Woodard, P.E., Supervisor

# \*\*\* RETURN THIS PAGE ONLY \*\*\*

<u>APPEARANCE</u>		
I/we will attend the hearing I/we the DES offices at 6 Hazen Drive i	<del>-</del>	or Monday, Monday, June 11, 2001 at 9:00
Signature	Date	
Name (please print or type):		
Title:		
Waiver of Hearing		
I/we certify that I/we understand administrative administrative fine a \$6,500 paid to Treasurer, State of	and that I/we hereby waive those right	Ify that I/we understand my/our right to a hhts. The fine payadministrative fine and t
RSARSA 6:11-a, DES may charge	e a fee in the amouRSA 6:11-a, DES or money order or \$25.00, draft, or	ficient* If you pay by check, draft, or money may charge a fee in the amount of 5%RS money order or \$25.00, whichever is greater
Signature	Date	
Name (please print or type):		
Title:		
RETURN THIS PAGE ONLY TO:		
James Ballentine, DES Enforcemen Department of Environmental Servi	<u> </u>	

James Ballentine, DES Enforcement Paralega Department of Environmental Services 6 Hazen Drive P.O. Box 95 Concord, NH 03302-0095